

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ANNAMARIA DISANTO,

Plaintiff,

- against -

E. & O. MARI, INC.

Defendant.

Docket No. 1:17-cv-0539

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff AnnaMaria DiSanto (“DiSanto” or “Plaintiff”) by and through her undersigned counsel, as and for his Complaint against Defendant E. & O. Mari, Inc., (“Mari” or “Defendant”) hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of American singer song writer MeShell Ndegeocello, owned and registered by DiSanto, a Los Angeles based photojournalist. Accordingly, DiSanto seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

**JURISDICTION AND VENUE**

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or are transacting business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

### **PARTIES**

5. DiSanto is a professional music photojournalist having a usual place of business at 835 S. Wooster Street Apt. 114, Los Angeles, CA 90035. DiSanto's photographs have been used on album and advertising campaigns for music performers such as Aerosmith and Kelly Clarkson. Her photographs have appeared in magazines and media outlets around the world.

6. Upon information and belief, Mari is a domestic business corporation duly organized and existing under the laws of the State of New York, with a place of business at 256 Broadway, Newburgh, New York 12550. Upon information and belief, Mari is registered with the New York Department of State, Division of Corporations to do business in the State of New York. At all times material hereto, Mari has owned and operated the URL: [www.LaBella.com](http://www.LaBella.com) (the "Website").

### **STATEMENT OF FACTS**

#### **A. Background and Plaintiff's Ownership of the Photograph**

7. DiSanto photographed singer song writer MeShell Ndegeocello (the "Photograph"). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. DiSanto is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph has a pending registration number with the United States Copyright Office of 1-5617388393.

#### **B. Defendant's Infringing Activities**

10. Mari ran an article on the Website entitled *MeShell Ndegeocello*. See [www.LaBella.com](http://www.LaBella.com). The article prominently featured the Photograph. A true and correct copy of the article is attached hereto as Exhibit B.

11. Mari did not license the Photograph from Plaintiff for its article, nor did Mari have Plaintiff's permission or consent to publish the Photograph on its Website.

**CLAIM FOR RELIEF**  
**(COPYRIGHT INFRINGEMENT AGAINST MARI)**  
**(17 U.S.C. §§ 106, 501)**

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Mari infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Mari is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Mari have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

17. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Mari be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded pre-judgment interest; and
5. Such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York  
July 12, 2017

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